IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/06/2002

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Second Appeal No.1418 of 1989

Shanmugham .. Appellant

Vs.

Arulmigu Vinayagar and Arulmighu
Dhandayuthapaniswami Dieties
rep. by their Manager
Doraisamy @ Semba Gounder (Decd.)
Arunagiri .. Respondent

(Respondent impleaded as per
the order dated 1.6.2002 in
CMP No.18692 of 1995)

Appeal against the judgment and decree dated 3.1.1989 made in A.S. No.45 of 1987 on the file of the I Additional District Court, salem, confirming the judgment and decree dated 5.2.1987 made in O.S.No.218 of 1985 on the file of the Sub Court, Namakkal.

!For Appellant : Mrs. Mythili Suresh
For Mr.M.S. Krishnan

^For Respondent : Mr.T. Arul Raj

:J U D G M E N T

The unsuccessful defendant before the Courts below is the appellant in the above second appeal. The respondent/ plaintiff filed O.S.No.2 18 of 1985 on the file of the Sub Court, Namakkal, for recovery of possession of the suit property and for mesne profit, alleging that the suit property originally belong to two sisters by name Kamatchi Ammal and Palaniammal, who executed a dedication deed on 5.5.1933 creating a trust in favour of the deities at Manapalli Village in Namakkal, the object being to manage the temple, to conduct Neivethiam, and lighting and other connected service. When one Muthuveera Gounder was Tamil Nadu Cultivating Tenants Protection Acting as the Manager of the Deity, the suit property was leased out to the defendant by lease deed dated 1.3.1973, putting him in possession. Alleging that the said Muthuveera Gounder was not empowered to do, the respondent/ plaintiff

contended that the possession of the defendant/appellant was unlawful and therefore, he was only a trespasser. Hence the above suit.

2. The appellant/defendant resisted the suit contending that he was a cultivating tenant under the lease deed dated 1.3.1972, which was marked as exhibit B1 and therefore, he was entitled to continue to be in possession of the suit property and not liable to be evicted unless and until steps were taken under due process of law.

3. Upon the above rival contentions, the learned Subordinate Judge, Namakkal, tried the suit on the following vital issues among other issues.
(a) Whether the lease deed dated 1.3.1972 is valid;
(b) Whether the possession of the appellant under the lease deed dated 1.3.1972 (exhibit B1) was unlawful?

4. While the respondent/plaintiff Semba Gounder examined himself as PW1 and marked the dedication deed 5.5.1933 as exhibit A1, the appellant/defendant examined himself as DW1 and marked the lease deed dated 1.3.1972 as exhibit B1 and also marked kist receipts as exhibits B2 to B9. Appreciating the above evidence, the trial Court held that exhibit B1 is not valid in law as Muthuveera Gounder, who was acting as Manager, had no authority to lease out the suit property, as per the dedication deed marked as exhibit B1, and consequently, held that the possession of the appellant/defendant was unlawful and therefore, decreed the suit, holding that the appellant/defendant was a trespasser.

5. On appeal, at the instance of the appellant/defendant herein, the learned District Judge, Salem, by decree and judgment dated 3.1.1989 , dismissed the appeal, confirming the decree and judgment of the trial Court.

6. Aggrieved by the said order dated 3.1.1989 in A.S.No.45 of 1987, the unsuccessful defendant has preferred the above second appeal.

7. The learned counsel for the appellant, placing reliance on the proceedings of the Record Officer dated 6.2.1989 marked as exhibit B20, by order dated 18.6.2002 in CMP No.11391 of 1989, contends that the appellant/defendant is a cultivating tenant and it has been recorded so under the provisions of The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, by competent authority, after holding due enquiry in which the respondent/plaintiff, Village Administrative Officer concerned and others have admittedly participated. The learned counsel further contends that unless the said proceedings is set aside in the manner known to law, the appellant/defendant is not entitled to be dispossessed from the suit property.

8. Per contra, learned counsel for the respondent contends that the order of the Record Officer marked as exhibit B20 is passed only on 6 .2.1989; but the above second appeal arises against the decree and judgment of the learned District Judge dated 3.1.1989 made in A.S.No.4 5 of 1989, confirming the decree and judgment dated 5.2.1987 in O.S. No.218 of 1985 on the file of the learned Subordinate Judge, Namakkal; and therefore, once the Civil Court

had held that the lease deed dated 1.3.1972 marked as exhibit B1 itself is not valid in law, as the Muthuveera Gounder who was acting as Manager had no authority to execute the lease deed dated 1.3.1972, marked as exhibit B1 under the dedication deed dated 5.5.1933 marked as exhibit A1, the possession of the suit property entrusted to the appellant/ defendant is unlawful and therefore he is only a trespasser. The learned counsel further contends that in the absence of any valid tenancy agreement, the appellant/defendant cannot claim himself as a cultivating tenant.

9. I have given careful consideration to the submissions of both sides.

10. In this regard, I am obliged to refer Section 6 of the Tamil Nadu Cultivating Tenants Protection Act, 1955, as well as Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, which read as follows:
Section 6 of the Tamil Nadu Cultivating
Tenants Protection Act:
"No Civil Court shall, except to the extent specified in section 3(3), have jurisdiction in respect of any matter which the Revenue Divisional Officer is empowered by or under this Tamil Nadu Cultivating Tenants Protection Act to determine and no injunction shall be granted by any Court in respect of any Tamil Nadu Cultivating Tenants Protection Action taken or to be taken in pursuance of any power conferred by or under this Tamil Nadu Cultivating Tenants Protection Act."

Section 16-A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act:
"Bar of jurisdiction of Civil Courts.- No civil Court shall have jurisdiction in respect of any matter which the record officer, the District Collector or other officer or authority empowered by or under this Tamil Nadu Cultivating Tenants Protection Act has to determine and no injunction shall be granted by

any Court in respect of any Tamil Nadu Cultivating Tenants Protection Action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Tamil Nadu Cultivating Tenants Protection Act."

11. An additional issue was also framed by the appellate Court, viz. whether the appellant is entitled to get the benefit of the Tamil Nadu Cultivating Tenants Protection Act by an order in I.A.No.510 of 19 88 in the said appeal.

12. While discussing the above additional issue in paragraph 16 of the judgment, the appellate Judge held that the learned counsel for the respondent/plaintiff-deity had conceded that if the appellant/ defendant was entitled to the benefit of the Tamil Nadu Cultivating Tenants Protection Act, the appellant/defendant could not be evicted and in such a case, his possession was lawful; and further observed that if the possession was unlawful, the appellant/defendant was not entitled to the benefit of Tamil Nadu Cultivating Tenants Protection Act.

13. The learned Appellate Judge, holding that the lease deed dated 1 .3.1972 marked as exhibit B1, suffers from want of authority under the

dedication deed dated 5.5.1933 marked as exhibit A1, held that the possession of the appellant/ defendant was unlawful and therefore, he cannot claim the benefit of the Tamil Nadu Cultivating Tenants Protection Act; it is further held that the civil Court does not have jurisdiction to go into the question whether the appellant/defendant was a cultivating tenant entitled to the benefit under the Tamil Nadu Cultivating Tenants Protection Act and thus, rightly refused to go into the question whether the appellant/defendant was entitled to the benefit of the Tamil Nadu Cultivating Tenants Protection Act.

14. The substantial question of law that arises for my consideration in the above second appeal is whether the civil Court is competent to decree the suit filed for recovery of possession in favour of the respondent/plaintiff, overlooking the defence raised the appellant/ defendant that he is entitled to the benefit of the both Tamil Nadu Cultivating Tenants Protection Acts? It is well settled in law that only the authorities under the Tamil Nadu Cultivating Tenants Protection Act and the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, are competent to decide who is the cultivating tenant and who could be entered as a cultivating tenant.

15. In this regard, I am obliged to refer a decision of a Full Bench of this Court in PERIYATHAMBI COUNDER v. DISTRICT REVENUE OFFICER reported in AIR 1980 Mad. 180, wherein the Full Bench had considered the relative scope of the jurisdiction of the authorities constituted under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act as well as the Civil Court having regard to the introduction of Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, exhaustively, holding that Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act was not intended to effect any suit prior to its introduction. In other words, after the introduction of Section 16-A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, it is only the authorities under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, are only competent to decide whether the claimant of the benefit of the Tamil Nadu Cultivating Tenants Protection Act could be recorded as cultivating tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act.

16. Admittedly, the suit laid by the respondent/ plaintiff for recovery of possession of the suit property, which was resisted by the appellant/defendant claiming benefit of the Tamil Nadu Cultivating Tenants Protection Act, was filed after the introduction of Section 16-A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act. By virtue of Section 2(8)(i) of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, the provisions of the Tamil Nadu Cultivating Tenants Protection Act automatically fits in to the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act. Therefore, it is only the authorities constituted under the said Tamil Nadu Cultivating Tenants Protection Act are competent to decide who could be the cultivating tenant and who could be entered as cultivating tenant.

17. In S.BALASUBRAMANIAM v. SHAMSU THALREEZ & ORS. reported in 1985 TNLJ 217, a Division Bench of this Court has held that after the introduction of Section 16-A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, when a person got himself registered as cultivating tenant under the Tamil

Nadu Cultivating Tenants Protection Act, it is not open to the Civil Court to trespass into the powers conferred under the statutory authorities under the said Tamil Nadu Cultivating Tenants Protection Act.

18. The learned counsel for the respondent, invites my attention to the admitted fact in the instant case that even before the appellant/defendant's name is entered as cultivating tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act by proceedings dated 6.2.1989 marked as exhibit B20, both the Courts below have concurrently held that the tenancy agreement relied upon by the appellant/ defendant is itself is not valid in law, as Muthuveera Gounder, who was acting as the Manager of the respondent/plaintiff Trust, was not competent to lease out the said lands to the appellant/defendant under exhibit A1 and therefore, the possession of the appellant/defendant was unlawful and hence, he is only a trespasser.

19. But, I am unable to appreciate the said contention because a Division Bench of this Court in Balasubramanian's case held that even though the decision rendered by the civil Court, anterior to the decision of the authorities under the Tamil Nadu Cultivating Tenants Protection Act, holding that the lease deed exhibit B1 itself is outside the purview of exhibit A1, such decision could not be legally sustainable and the same has to be ignored in the eye of law, as, before the competent authority, Muthuveera Gounder suffers from want of authority to execute such lease deed as per the dedication deed marked as exhibit A1. The competent authority has given sufficient opportunity to the respondent/plaintiff as well as concerned Village Administrative Officers to substantiate their case, but the respondent/plaintiff could not satisfy the authorities that the Muthuveera Gounder was not competent to execute the lease deed nor deny that the appellant/ defendant was permitted to cultivate the said land, which necessitated the competent authority to hold that the appellant/defendant was a cultivating tenant.

20. If that be so, in my considered opinion, the fact that Muthuveera Gounder was acting as Manager was not disputed; that no other contra evidence was adduced by the respondent/plaintiff, that Muthuveera Gounder was not a trustee was not disputed at the time of executing the lease deed; and therefore, the Record Officer held that the appellant was a cultivating tenant and recorded so by proceedings dated 6.2.1989 marked as exhibit B20, cannot be lightly disregarded, unless the same is challenged in appropriate proceedings in the manner know to law, under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act.

21. In such circumstances, it may not be proper for this Court to grant a decree in favour of the respondent/ plaintiff for recovery of possession of the suit property except under the due process of law.

22. The learned counsel for the respondent is not in a position to say whether the respondent has challenged the said order before the competent appellate authority. Therefore, I am obliged to set aside the decree and judgment of the Courts below and allow the appeal, but without prejudice to the right of either side to work out their rights in the manner known to law,

if they are aggrieved by the proceedings dated 6.2.1989.

In the result, second appeal is allowed. No costs. CMP Nos.11390 of 1989 and 8758 of 2001 are closed.

Index : Yes. 18.6.2002.
Internet: Yes

kpl

To

1. The I Addl. District Judge
Salem (with records).

2. The Subordinate Judge
Namakkal (with records).

Copy to:

The Section Officer
VR Section, High Court, Madras.

P.D. DINAKARAN, J.

S.A.No.1418 of 1989.